

RECORDATION NO. 22419-G

MAR 14 '03 11:00AM

SURFACE TRANSPORTATION BOARD

ALVORD AND ALVORD
ATTORNEYS AT LAW
1050 SEVENTEENTH STREET, N.W.
SUITE 301
WASHINGTON, D.C.

20036

(202) 393-2266

FAX (202) 393-2156

E-MAIL alvordlaw@aol.com

ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

OF COUNSEL
URBAN A. LESTER

March 14, 2003

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are three (3) copies of an Mortgage and Security Agreement, dated as of March 14, 2003, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Assignment of Locomotive Head Lease which is being filed under Recordation Number 22419-D.

The names and addresses of the parties to the enclosed document are:

Borrower: El-Mo-Mex, Inc.
c/o General Motors Corporation
(Electro-Motive Division)
9301 West 55th Street
LaGrange, IL
U.S.A. 60525

[Secured Parties: Export Development Canada
151 O'Connor Street
Ottawa, Ontario
K1A 1K3 Canada

Kreditanstalt Fur Wiederaufbau
Palmengartenstrasse 5-9
60325 Frankfurt am Main
Germany]

Mr. Vernon A. Williams
March 14, 2003
Page Two

A description of the railroad equipment covered by the enclosed document
is:

75 locomotives TFM 1600 – TFM1674

A short summary of the document to appear in the index follows:

Mortgage and Security Agreement

Also enclosed is a check in the amount of \$30.00 payable to the order of
the Surface Transportation Board covering the required recordation fee.

Kindly return one stamped copy of the enclosed documents to the
undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Alvord', written in a cursive style.

Robert W. Alvord

RWA/anr
Enclosures

MORTGAGE AND SECURITY AGREEMENT

THIS AGREEMENT made this 14 day of March, 2003.

TO:

EXPORT DEVELOPMENT CANADA

151 O'Connor Street
Ottawa, ON K1A 1K3
Canada

-and-

KREDITANSTALT FUR WIEDERAUFBAU

Palmengartenstrasse 5-9
60325 Frankfurt am Main
Germany

(together, the "Secured Party")

GRANTED BY:

EL-MO MEX, INC.

having its principal office or place of business at:

c/o General Motors Corporation (Electro-Motive Division)
9301 West 55th Street
LaGrange, Illinois
U.S.A. 60525

(the "Borrower")

RECITALS

WHEREAS the Lenders have made available to El-Mo-Mex, Inc. (the "Borrower") a non-revolving term loan facility in the aggregate amount not to exceed U.S. \$111,225,000 pursuant to a loan agreement (the "Loan Agreement") dated September 8, 1999 between the Borrower and the Secured Party;

AND WHEREAS the Borrower used the proceeds of the loans made pursuant to the Loan Agreement to capitalize its wholly owned subsidiary, Edmun Inc. ("Edmun") that in turn purchased seventy-five (75) General Motors SD70MAC 4,000 horse power diesel-electric locomotives as defined in the Purchase Agreement between General Motors Corporation (Electro-Motive Division) and Edmun made as of September 3, 1999, as more particularly described in Schedule A (the "Locomotives" and each, a "Locomotive");

AND WHEREAS Edmun leased the Locomotives to General Motors de Mexico ("GMM"), who subleased the Locomotives to TFM, S.A. de C.V. ("TFM");

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FILED

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SURFACE TRANSPORTATION BOARD

AND WHEREAS Edmun has now sold to the Borrower all of its right, title and interest in the Locomotives and has now transferred to the Borrower all rights under the Commercial Contract as herein defined;

AND WHEREAS the Secured Party now wishes to confirm its security interest in the Locomotives and other components of the Secured Property as defined herein;

NOW THEREFORE for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the undersigned hereby agrees and covenants as follows:

ARTICLE 1 **DEFINITIONS**

1.1 Defined Terms

In this Security Agreement, unless the context otherwise requires or unless otherwise defined, all capitalized terms used herein shall have the meaning attributed thereto in the Loan Agreement.

1.2 Definitions

In this Agreement, the following terms shall have the meanings set out below:

- (a) **“Encumbrances”** means any pledge, lien, charge, security agreement, lease, hypothec, title retention contract, mortgage, encumbrance, option, adverse claim, demand or restriction of any kind;
- (b) **“Obligations”** has the meaning ascribed thereto in Section 2.1;
- (c) **“Permitted Encumbrances”** means:
 - (i) Encumbrances for Taxes and assessments not at the time overdue; or
 - (ii) any undetermined or inchoate Encumbrances and charges that have not at the time been filed against the Borrower;
- (d) **“Secured Property”** means all of the property of the following description whether now existing or hereafter arising or acquired, and wherever located, and whatever may be received upon sale, exchange, collection or other disposition thereof (including all insurance proceeds payable by reason of loss of or damage to the Secured Property):
 - (i) all Locomotives and components thereof including, without limitation, rights to acquire the same, under an agreement, whenever amended, among, from or through Electro-Motive Division of General Motors (“EMD”) dated as of September 8, 1999 (the “Commercial Contract”), owned by the Borrower at the date hereof being those described in Schedule A attached hereto; each such Locomotive, together with all (if

- acquired under the Commercial Contract) equipment, appliances, components, parts, and appurtenances attached to such locomotives;
- (ii) together with all of the Borrower's interest pursuant to the Commercial Contract; and
 - (iii) together with all substitutions, renewals, replacements, repossessions, additions, improvements, accessions and exchanges of all the foregoing;
- (e) **"Security Interest"** means the security interest granted pursuant to Section 2.1;
- (f) **"Taxes"** means all present or future taxes of any kind or nature whatsoever including, without limitation, income taxes, sales or value-added taxes, stamp taxes, levies, imposts, duties, fees, royalties and all deductions and withholdings together with any fines, penalties and interest thereon and any restrictions or conditions resulting in an obligation to pay monies to a government or governmental agency of governmental authority.

ARTICLE 2

SECURITY INTERESTS

2.1 Security Interest

The Borrower, having its chief executive office at the address as set forth above, grants to the Secured Party, having their respective addresses as set forth above, a continuing, specific and fixed security interest in, and an assignment of the Secured Property as collateral security for the performance of its obligations (the "Obligations") to the Secured Party under the Loan Agreement.

2.2 Fixed Nature of Security Interests

The Security Interest is intended to operate as and create a fixed and specific charge of all of the Secured Property presently existing, and with respect to all future Secured Property, to operate as a fixed and specific charge of such future Secured Property.

2.3 Attachment

The Borrower acknowledges that value has been given. The Security Interest is intended to attach, as to all of the Secured Property in which the Borrower now or hereafter has an interest, upon the execution by the Borrower of this Agreement.

ARTICLE 3

RIGHT TO DEAL

3.1 Borrower's Rights before Default

Until the occurrence of an Event of Default and subject to the terms hereof, the Borrower shall be entitled to deal with the Secured Property in the ordinary course of business, provided

however, that no such action shall be taken which would impair the effectiveness of the Security Interests created hereby or which would be inconsistent with, or violate the provisions of, this Agreement.

ARTICLE 4 **COVENANT**

4.1 No Encumbrances

The Borrower shall not, directly or indirectly, create, incur, or suffer to exist, nor will it permit the creation, incurring or suffering to exist of, any Encumbrance (other than Permitted Encumbrances) on or with respect to any of the Secured Property.

4.2 Taxes, Assessments and Charges

The Borrower shall pay promptly when due all taxes, assessments, and other public charges upon the Secured Property or upon its possession, ownership, or operation, including, without limitation, any property, excise, sales or other tax or charge. The Borrower shall not be required to pay or discharge any such Taxes so long as it shall in good faith and by appropriate administrative or legal proceedings contest the validity thereof in a reasonable manner which will not affect or endanger the title of the Borrower or the security interest of the Lenders in the Secured Property, and the Borrower shall reimburse the Lenders for any damages or expenses resulting from such failure to pay or discharge.

ARTICLE 5 **DEFAULT**

5.1 Default

The Borrower shall be in default under this Agreement upon the occurrence of an Event of Default under the Loan Agreement (an "Event of Default").

ARTICLE 6 **REMEDIES**

6.1 Secured Party's Rights and Remedies

Upon the occurrence of an Event of Default, the Secured Party may, at its option, proceed to enforce payment and performance of the obligations and to exercise any or all of the rights and remedies contained herein, or otherwise afforded by law, in equity or otherwise. The Secured Party shall have the right to enforce one or more remedies successively or concurrently in accordance with applicable law and the Secured Party expressly retains all rights and remedies not inconsistent with the provisions herein. Without limiting the generality of the foregoing, the Secured Party may, upon the occurrence of any Event of Default and to the extent permitted by applicable law:

- (a) Enter and Repossess: enter the Borrower's premises to repossess, disable and remove the Secured Property from the Borrower's premises or wherever located;

- (b) Retain the Collateral: retain and administer the Secured Property;
- (c) Dispose of the Collateral: dispose of any Secured Property by public auction, private tender or private contract with or without notice, advertising or any other formality;
- (d) Foreclosure: foreclose upon the Secured Property;
- (e) Incur Fees: in connection with (a), (b), (c) and (d) for account of the Borrower.

6.2 Waivers and Extensions

The Secured Party may waive default or any breach by the Borrower of any of the provisions contained in this Agreement. No waiver shall extend to a subsequent breach or default, whether or not the same as or similar to the breach or default waived and no act or omission of the Secured Party shall extend to or be taken in any manner whatsoever to affect any subsequent breach or default of the Borrower or the rights of the Secured Party resulting therefrom. Any such waiver must be in writing and signed by the Secured Party to be effective.

The Secured Party may also grant extensions of time and other indulgences, accept compositions, grant releases and discharges, release the Secured Property to third parties and otherwise deal with the Secured Property and other securities as the Secured Party may see fit without prejudice to the liability of the Borrower to the Secured Party, or the Secured Party's rights, remedies and powers under this Agreement. No extension of time, forbearance, indulgence or other accommodation now, heretofore or hereafter given by the Secured Party to the Borrower shall operate as a waiver, alteration or amendment of the rights of the Secured Party or otherwise preclude the Secured Party from enforcing such rights.

6.3 Effect of Possession

As soon as the Secured Party takes possession of any Secured Property, all powers, functions, rights and privileges of the Borrower and the directors and officers of the Borrower with respect to the Secured Property shall cease, unless specifically continued by the written consent of the Secured Party.

6.4 Limited Recourse

Notwithstanding anything contained in this Agreement, any obligations of and claims and rights or recourse against the Borrower shall be satisfied and paid out of, and only out of, and be limited to the Secured Property. No recourse nor resort shall be had nor shall judgment be issued or other process levied against assets or rights of the Borrower other than its interest in the Secured Property.

ARTICLE 7
MISCELLANEOUS

7.1 Entire Agreement

This Agreement contains the entire agreement between the parties relating to the Security Interests granted herein. Any modification of this Agreement shall not be binding unless in writing and signed by the Secured Party and the Borrower. There are no representations, warranties, covenants or acknowledgements affecting, or relied upon in connection with entering into, this Agreement or any Secured Property, other than as expressed herein in writing.

7.2 Severability

Any provision of this Agreement prohibited by law or otherwise ineffective shall be ineffective only to the extent of such prohibition or ineffectiveness and shall be severable without invalidating or otherwise affecting the remaining provisions hereof.

7.3 Security Interests Effective Immediately

Neither the execution of, nor any filing with respect to, this Agreement shall obligate the Secured Party to make any advance or loan or further advance, or bind the Secured Party to grant or extend any credit to the Borrower, but the Security Interests shall take effect forthwith upon the execution of this Agreement by the Borrower.

7.4 Further Assurances

The Borrower shall give such further assurances and do, execute and perform all such further acts, deeds, documents, transfers and security agreements as the Secured Party may reasonably require (including bills of sale or other evidence of transfer of ownership) in order to give effect to the provisions hereof and for the better granting, transferring, charging, confirming or perfecting the Security Interest and the priority accorded to them by law or under this Agreement and to be able to record any transfer of title of the Locomotives as a result of the exercise of rights hereunder by the Secured Party, with the Mexican Railroad Registry (Registro Ferroviario Mexicano) and other applicable registries.

7.5 Notices

Every demand, notice or communication given or required to be given to a party hereunder shall be in writing and shall be personally delivered to an officer or other responsible employee of the addressee or sent by telefacsimile or other direct written electronic means, charges prepaid, at or to or given by transmittal by telecopy or facsimile transmission addressed to the respective parties at its address or telecopy or facsimile number set forth below or to such other address or telecopy or facsimile number as such party may designate by notice in writing to the other party hereto:

(i) if to the Borrower, at:

El-Mo-Mex, Inc.

c/o General Motors Corporation (Electro-Motive Division)
9301 West 55th Street
LaGrange, Illinois
U.S.A. 60525
Attention: General Counsel
Fax No.: 708-387-6312

With a copy to:

Edmun Inc.
c/o Osler, Hoskin & Harcourt LLP
Suite 1900
Toronto Dominion Square
333-7th Avenue S.W.
Calgary, Alberta
Canada T2P 2Z1
Attention: General Motors Legal Counsel
Fax No.: 403-260-7024

(ii) if to the Secured Party, at:

Export Development Canada
151 O'Connor Street
Ottawa, Ontario
K1A 1K3
Canada
Attention: Erik Kaunivista, Loans Operations
Fax No.: 613-598-2514

AND:

Kreditanstalt Fur Wiederaufbau
Palmengartenstrasse 5-9
60325 Frankfurt am Main
Germany
Attention: Vice President
Fax No.: 0049/69-7431-2944

or at or to such other address or addresses or telefacsimile number or numbers as either party hereto may from time to time designate to the other party in such manner. Any communication which is personally delivered as aforesaid shall be deemed to have been validly and effectively given on the date of such delivery if such date is a Banking Day and such delivery was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the Banking Day next following such date of delivery. Any communication which is transmitted by telefacsimile or other direct written electronic means as aforesaid shall be deemed to have been validly and effectively given on the date of transaction if such date is a Banking Day and such transmission was made during normal business hours of the

recipient; otherwise, it shall be deemed to have been validly and effectively given on the Banking Day next following such date of transmission.

7.6 Discharge

Upon payment and performance by the Borrower of the Obligations, the Secured Party shall upon request in writing by the Borrower deliver up this Agreement to the Borrower and shall at the expense of the Borrower cancel and discharge the Security Interests and execute and deliver to the Borrower such documents as shall be requisite to discharge the Security Interests hereby constituted.

7.7 Headings

All headings and titles in this Agreement are for reference only and are not to be used in the interpretation of the terms hereof.

7.8 Binding Effect

This Agreement shall be binding on the Borrower, and its successors and assigns and enure to the benefit of the Secured Party and the successors and permitted assigns of the Secured Party.

7.9 Jurisdiction

This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Borrower hereby irrevocably submits to the non-exclusive jurisdiction of the courts of the Province of Ontario for the purpose of any legal or equitable suit, action or proceeding in connection with this Agreement.

7.10 Delivery of Copy

The Borrower hereby acknowledges receiving a copy of this Agreement.

EXECUTED as of the date first written above.

EL-MO-MEX, INC.

By: 

Name: P. Michael Smith

Title: Vice President

By: 

Name: K. McNameless

Title: VICE PRESIDENT



SPRINGFIELD, ILLINOIS

APOSTILLE
APOSTILLE

(Convention de La Haye du 5 Octobre 1961)

1. Country: United States of America
This public document
2. has been signed by KATHRYN J. ZICCARELLI
3. acting in the capacity of NOARY PBLIC, DUPAGE COUNTY
4. bears the seal/stamp of STATE OF ILLINOIS

Certified

5. Chicago, Illinois
6. MARCH 10, 2003
7. by the Secretary of State, State of Illinois
8. No. 7685
9. Seal/Stamp:

10. Signature:

Jesse White

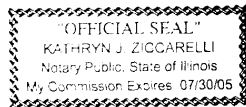
JESSE WHITE
SECRETARY OF STATE
STATE OF ILLINOIS



STATE OF ILLINOIS)
)
)
COUNTY OF COOK)
)
)
TO WIT:)

I, Kathryn J. Ziccarelli, of the County of DuPage, in the State of Illinois, a notary public in and for the State of Illinois, duly appointed, do certify that the paper writing hereto annexed is the **Mortgage and Security Agreement** between **Export Development Canada, Kreditanstalt Fur Wiederaufbau** and **El-Mo-Mex, Inc.**, (the "Corporation") and I was present and did see **Keith A. McCanness** executing the document on behalf of the Corporation in his capacity as **Vice President** of the Corporation, an act whereof being requested I have granted the same under my notarial form and seal of office to serve and avail as occasion shall or may require.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my notarial seal at the City of LaGrange this 7th day of March, 2003.

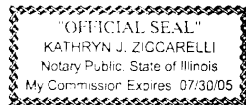


Kathryn J. Ziccarelli
A Notary Public in and for the
State of Illinois

STATE OF ILLINOIS)
)
)
COUNTY OF COOK)
)
)
TO WIT:)

I, Kathryn J. Ziccarelli, of the County of DuPage, in the State of Illinois, a notary public in and for the State of Illinois, duly appointed, do certify that the paper writing hereto annexed is the **Mortgage and Security Agreement** between **Export Development Canada, Kreditanstalt Fur Wiederaufbau** and **El-Mo-Mex, Inc.**, (the "Corporation") and I was present and did see **P. Michael Smith** executing the document on behalf of the Corporation in his capacity as **Vice President** of the Corporation, an act whereof being requested I have granted the same under my notarial form and seal of office to serve and avail as occasion shall or may require.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my notarial seal at the City of LaGrange this 7th day of March, 2003.



Kathryn J. Ziccarelli
A Notary Public in and for the
State of Illinois

SCHEDULE A
LOCOMOTIVES ROSTER

Reporting Mark: TFM

<u>ROAD NUMBER</u>	<u>ROAD NUMBER</u>	<u>ROAD NUMBER</u>
1600	1625	1650
1601	1626	1651
1602	1627	1652
1603	1628	1653
1604	1629	1654
1605	1630	1655
1606	1631	1656
1607	1632	1657
1608	1633	1658
1609	1634	1659
1610	1635	1660
1611	1636	1661
1612	1637	1662
1613	1638	1663
1614	1639	1664
1615	1640	1665
1616	1641	1666
1617	1642	1667
1618	1643	1668
1619	1644	1669
1620	1645	1670
1621	1646	1671
1622	1647	1672
1623	1648	1673
1624	1649	1674

Total Units = 75

CERTIFICATION

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: _____

3/14/03



Robert W. Alvord